

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:10-CV-19-FDW-DCK**

**AVANTI HEARTH PRODUCTS, LLC,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **JANIFAST, INC., JANIFAST, LTD., MPHASE** )  
 **TECHNOLOGIES, INC., and MICROPHASE** )  
 **CORPORATION,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER IS BEFORE THE COURT** on Defendants Janifast Inc. and mPhase Technologies, Inc.’s (“Moving Defendants”) “Motion To Quash And For Protective Order” (Document No. 58). This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and immediate review is appropriate. Having carefully considered the motion, the record, and applicable authority, the undersigned will deny the motion.

The instant motion was filed late on Friday, June 24, 2011, requesting that the Court quash Plaintiff Avanti Hearth Products, LLC’s (“Plaintiff”) subpoenas for depositions set to begin on: Monday, June 27, 2011, at 9:00 a.m.; Monday, June 27, 2011, at 1:00 p.m.; and Tuesday June 28, 2011, at 9:00 a.m. (Document No. 58). In addition, the motion seeks entry of a protective order.

The subpoenas subject to the motion were issued by the United States District Court for the District of New Jersey and the United States District Court for the District of Connecticut. (Document Nos. 58-1, 58-2 and 58-3). It appears that Moving Defendants’ counsel was served with notices of these depositions on or about June 15, 2011. Id.

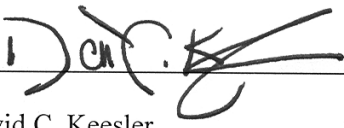
As an initial matter, the undersigned notes that Fed.R.Civ.P. 45(c)(3) provides that an issuing

court has the authority to quash or modify a subpoena. See The Neighbors Law Firm v. Highland Capital Management, L.P., 2011 WL 649925 at \*2 (E.D.N.C. Feb. 10, 2011); see also, Koch Industries, Inc. v. Hoechst AG, 3:03CV1516-RLV, 2008 WL 4167042 at \*1 (W.D.N.C. Sept. 3, 2008) (“Rule 45 of the Federal Rules of Civil Procedure only provides authority to the ‘issuing court’ to modify, enforce, or quash a subpoena”). The undersigned is without information as to whether Moving Defendants have sought, or been granted, a similar motion to quash by the courts of New Jersey and/or Connecticut.

The undersigned also observes that the pending motion is most likely moot, as the time for the events Moving Defendants seek to quash and/or to be granted protection from have already passed. Moreover, the movants appear to have failed to submit a proposed order and/or proposed protective order as required by Local Rule 7.1(G).

**IT IS THEREFORE ORDERED** that Defendants Janifast Inc. and mPhase Technologies, Inc.’s “Motion To Quash And For Protective Order” (Document No. 58) is **DENIED WITHOUT PREJUDICE**.

Signed: June 28, 2011

  
\_\_\_\_\_  
David C. Keesler  
United States Magistrate Judge

